

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FILED/ACCEPTED

NOV - 2 2007

Federal Communications Commission  
Office of the Secretary

In the Matter of	)	EB Docket No. 07-197
	)	
Kurtis J. Kintzel, Keanan Kintzel, and all	)	File No. EB-06-IH-5037
Entities by which they do business before the	)	
Federal Communications Commission	)	FRN: 0007179054
	)	
Resellers of Telecommunications Services	)	NAL/Acct. No. 200732080029

To: The Commission

**ENFORCEMENT BUREAU'S OPPOSITION TO  
MOTION OF THE KINTZELS, ET AL., TO MODIFY THE  
ISSUES, OR, IN THE ALTERNATIVE, STATEMENT OF  
OBJECTIONS TO THE ORDER TO SHOW CAUSE**

On or about October 26, 2007, Kurtis J. Kintzel, Keanan Kintzel, and all entities by which they do business ("Kintzels"), directed to the Commission a pleading entitled, "Motion of the Kintzels, et. al., to Modify the Issues, or, in the Alternative, Statement of Objections to the Order to Show Cause" in the above-captioned proceeding. The Chief, Enforcement Bureau, by her attorneys, hereby moves to dismiss as procedurally defective or, in the alternative, deny on the merits the subject Motion. In support whereof, the following is shown.

In their Motion, the Kintzels initially request the Commission to modify and/or delete certain issues that have been designated for hearing in this proceeding. Although this case was designated for hearing by the Commission,<sup>1</sup> it is presently pending before an FCC Administrative Law Judge. Pursuant to Section 1.243(k) of the Commission's

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<sup>1</sup> *Kurtis J. Kintzel, et al.*, Order to Show Cause and Notice of Opportunity for Hearing, FCC 07-197 (released September 10, 2007).

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rules, 47 C.F.R. § 1.243(k), the authority to act on motions to modify and/or delete hearing issues resides with the presiding officer,<sup>2</sup> in this instance the Presiding Administrative Law Judge.<sup>3</sup> Because the Motion seeks to have the Commission rule on a matter over which the Presiding Administrative Law Judge currently has authority, the Motion is procedurally defective as filed and should be summarily dismissed.<sup>4</sup>

The Motion appears to seek to have the Commission remove Kurtis J. Kintzel and Keanan Kintzel (the "Kintzel brothers") as parties in this proceeding.<sup>5</sup> The Kintzel brothers argue that the Order to Show Cause improperly seeks to impose individual liability on them. In support of this position, the Kintzel brothers argue that to impose individual liability on them would require piercing the veil of their various corporate entities. They further argue that the Order to Show Cause does not allege that these companies are sham entities, and thus that piercing the corporate veil would be improper in this instance.

Although the Kintzels characterize their pleading as an objection to a show cause order, it appears to be more in the nature of a petition for reconsideration of the Order to Show Cause. In the event the Commission construes this request as a petition for reconsideration of an order designating a case for hearing, pursuant to section 1.106(a)(1)

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<sup>2</sup> See also *Request for Declaratory Ruling by Fletcher, Heald and Hildreth*, Memorandum Opinion and Order, 75 FCC 2d 721, 46 Rad. Reg. 2d 1425 (1980).

<sup>3</sup> See *Kurtis J. Kintzel, et al.*, Order, FCC 07M-32 (ALJ, released September 11, 2007).

<sup>4</sup> Should the Commission determine that the Motion is properly before it, the Bureau respectfully requests that it be given fourteen (14) days from the date it is notified of such determination in which to respond to the Motion on the merits.

<sup>5</sup> See Motion at 16-18

of the Commission's rules,<sup>6</sup> the Commission should deny the relief sought as being without merit.

By its terms, Section 1.106(a)(1) provides that the Commission will entertain a petition for reconsideration of an order designating a case for hearing "if, and insofar as, the petition relates to an adverse ruling with respect to the petitioner's participation in the proceeding." The Order to Show Cause directs the Presiding Administrative Law Judge to determine, among other things, (1) whether the Kintzels' authority "to provide interstate common carrier services should be revoked," and (2) "whether ... [the Kintzels] should be ordered to henceforth cease, desist and otherwise refrain from providing interstate common carrier services of any kind without prior written application to and consent from the Commission." The Commission, in its Order to Show Cause, named the Kintzel brothers as parties in this proceeding in order to provide them with an opportunity to present evidence on these and other issues. To remove them as parties from this proceeding would deny them the process to which they are due by preventing them from participating in a proceeding which seeks to determine their future status before the Commission. If they so choose, they may withdraw their notices of appearance and refrain from availing themselves of the opportunity to be heard. However, removing them as parties from this proceeding and preventing them from so availing themselves would be inconsistent with established procedures, and this request to do so is entirely lacking in merit.<sup>7</sup>

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<sup>6</sup> 47 C.F.R. § 1.106(a)(1).

<sup>7</sup> The Kintzel brothers do not argue that the Commission lacks jurisdiction to seek relief against them, nor could they. *See, e.g., CCN, Inc., Order to Show Cause and Notice of Opportunity to Be Heard*, 12 FCC Rcd 8547, 8560 para. 21 (1997).

Finally, the Motion seeks modification and/or deletion of certain issues set for determination in the Order to Show Cause. Thus, the Motion seeks:

- (a) a more definite statement of the number and instances of the alleged violations;
- (b) to reduce the proposed penalties;
- (c) to delete certain issues set for determination to the extent they seek cumulative punishments for both alleged violations of a consent decree and the Commission's rules;
- (d) to have the alleged violations of a consent decree heard in a separate hearing from the alleged violations of the Commission's rules; and
- (e) to delete the allegations and related issue for determination relating to the discontinuance of service in violation of the Consent Decree and the Commission's rules.

None of these issues "relates to an adverse ruling with respect to petitioner's participation in the proceeding," which is the only basis upon which the Commission will entertain a petition for reconsideration of an order designating a case for hearing.<sup>8</sup> Thus, the Commission should deny the request for reconsideration of the above-listed issues as being without merit.

Wherefore, for the foregoing reasons, the Bureau respectfully requests that the Respondents' Motion to Modify the Issues be denied as not properly before the Commission. To the extent the Commission determines that the Motion is properly before it, the Bureau respectfully requests fourteen (14) days from the date it receives notification of such determination to respond to the merits of the Motion. Finally, the Bureau respectfully requests that, to the extent the Commission treats the Motion as a petition for reconsideration, the Commission deny the petition.

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<sup>8</sup> 47 C.F.R. § 1.106(a)(1).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michele Levy Berlove", written over a horizontal line.

Kris Anne Monteith  
Chief, Enforcement Bureau

Michele Levy Berlove  
Attorney, Investigations and Hearings Division

Federal Communications Commission  
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November 2, 2007

**CERTIFICATE OF SERVICE**

Rebecca Lockhart, a Paralegal Specialist in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has, on this 2nd day of November, 2007, sent by first class United States mail copies of the foregoing **Enforcement Bureau's Opposition to Motion to Modify the Issues to:**

Catherine Park, Esq.  
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Counsel for Kurtis J. Kintzel, Keanan Kintzel, Business  
Options, Inc., Buzz Telecom Corporation, US Bell, Inc., Link  
Technologies and Avatar Enterprises

A copy of the foregoing was also served via hand-delivery to:

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
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Administrative Law Judge Richard L. Sippel  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 1-C861  
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Rebecca Lockhart